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No. 83-963

In the Supreme Court of the United States

OCTOBER TERM, 1983

BOARD OF LICENSE COMMISSIONERS
OF THE TOWN OF TIVERTON,
PETITIONER,

v.

LOUIS H. PASTORE, JR., in his capacity as
LIQUOR CONTROL ADMINISTRATOR of the
STATE OF RHODE ISLAND and
ATTIC LOUNGE, INC.,
RESPONDENTS.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

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QUESTION PRESENTED

Whether the Rhode Island Supreme Court correctly held that the exclusionary rule is applicable in an Administrative Proceeding for the revocation or suspension of an alcoholic beverage license.

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Statement of the Case

The Respondents submit that the Statement of the Case contained in the Petitioner's Petition for a Writ of Certiorari is a fair and accurate representation of this case and the proceedings below.

Argument

The Rhode Island Supreme Court, in the instant case, properly decided that the exclusionary rule should be extended to Civil Administrative hearings conducted by the Liquor Control Administrator. The decision of the Rhode Island Supreme Court was based upon the Fourth Amendment to the United States Constitution. The fact that the decision of the Rhode Island Supreme Court was predicated on Fourth Amendment principles is what the Petitioner is challenging.

Although this Honorable Court has not decided the exact question in issue, the case of *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U.S. 693 (1965) provides strong support for the decision reached by the Rhode Island Supreme Court. While not directly on point, *Plymouth Sedan*, *supra*, leads to the same conclusion reached by the Rhode Island Supreme Court. In *Plymouth Sedan*, *supra*, the owner of the vehicle referred to was driving that vehicle from New Jersey into Pennsylvania when the vehicle was illegally stopped and searched. Alcoholic beverages without Pennsylvania State Tax Seals were found in the trunk of the vehicle. The Commonwealth sought to confiscate the vehicle under a statute which provides for the forfeiture of a vehicle carrying unsealed liquor, despite the fact that in separate criminal proceedings the owner was acquitted due to the exclusion of the illegally seized liquor. While the forfeiture proceedings were civil in nature, *Plymouth Sedan*, *supra*, held that the exclusionary rule should nevertheless apply. The Court concluded:

> "A forfeiture proceeding is quasi-criminal in character. Its object, like a criminal proceeding, is to penalize for the commission of an offense against the law.... It would be anomalous...to hold that in a criminal proceeding, the illegally seized evidence is excludable, while in a forfeiture proceeding requiring the determination that the criminal law has been violated, the same evidence would be permissible."

Plymouth Sedan, *supra*, at Page 701.

Additionally, other State Courts have clearly decided the same issue in favor of the position adopted by the Rhode Island Supreme Court. *Commonwealth Liquor Control Board* v. *Mottola's 51 Tavern, Inc.*, 37 Pa. Cmwlth, 234, 389 A.2d 1213 (1978); *Pennsylvania Liquor Control Board* v. *Leonardziak*, 2 110 Pa. Super. 511, 233 A.2d 606 (1967); *Finn's Liquor Shop* v. *State Liquor Authority*, 301 N.Y.S.2d 584, 249 N.E.2d 440 (1969), *cert. den.* 396 U.S. 840 (1969); *Leogrande* v. *State Liquor Authority*, 268 N.Y.S.2d 433 (1966). The aforementioned cases are strikingly similar in nature to the instant case, and the decisions in each of those cases strongly support the reasonings adopted by the Rhode Island Supreme Court.

As *Finn* and *Leonardziak*, *supra*, noted, the facts in the *Plymouth Sedan* case, *supra*, are not that different from the Liquor Control Cases involving the license itself. In both cases, there must be a determination that the criminal law has been violated before a penalty is imposed upon the licensee. In neither situation is the State Government seeking or entitled to compensation for damages. In both cases, it is the owner or license holder that is being penalized. The Supreme Court noted that the penalty of forfeiture would be higher than the highest fine possible. In the instant case, the license holder corporation is put out of business and its principals are deprived of its income, which is potentially a greater loss than any one of a number of criminal penalties; or at least not less severe.

As *Finn*, *supra*, noted, without the exclusionary rule there would be no meaningful deterrence to protect against harassment. The State could effect parallel sanctions in an Administrative Proceeding without being concerned about the legality of the police measures that were employed to obtain evidence. The Petitioners, naturally, raised the issue that there would be no additional deterrence from excluding the evidence; however, *Finn*, *supra*, faced this question specifically and concluded that deterrence would be served if they refused to apply the exclusionary rule.

A number of State Courts as outlined *supra*, have examined, in detail, the application of the exclusionary rule in liquor license revocation proceedings, and those Courts which have passed upon this issue, have given due consideration to the question of balancing the considerations involved. On the other hand, the Petitioner has cited no case, where on the facts similar to those in the case at bar, any court has struck the balance in favor of the admissibility of the evidence.

In view of the fact that the existing case precedent in this area, cited *supra*, is clearly in favor of the exclusion of the evidence, it is important to note the rationale employed by those Courts so deciding the issue. In *Leonardziak*, *supra*, at page 608, the court offers insight into its reasons for applying the exclusionary rule in cases of this nature:

> "The purpose of the exclusionary rule is to compel respect for the constitutional guarantee in the only effectively available way by removing the incentives to disregard it. The policy of deterring unconstitutional activity by suppressing evidence would not be served if police, after being barred from using evidence against a licensee in a criminal court, could use the identical evidence to punish with equal or greater severity through the machinery of the Liquor Control Board."

The Court in *Finn*, *supra*, went on to say at page 588:

> "...the exclusionary rule rests on a theory of deterrence; that policy would not be served if the illegal official activity could be used despite unavailability in criminal proceedings to effect parallel sanctions of forfeiture in an Administrative Proceeding."

For other cases validating the application and use of the exclusionary rule in Liquor Board Administrative Hearings, see *LaPinta* v. *New York State Liquor Authority*, 294 N.Y.S.2d 947 (1968); *Malik* v. *New York State Liquor Authority*, 294 N.Y.S.2d 948 (1968); *People* v. *McGrath*, 412 N.Y.S.2d 801 (1978); and *McPherson* v. *New York City Housing Authority*, 365 N.Y.S.2d 862 (1975).

The Petitioner, in his petition, while recognizing the wealth of authority underlying the theory that the exclusionary rule is applicable to Administrative Liquor License Revocation Hearings, reasons that the holding of *Plymouth Sedan*, *supra*, is inapplicable to a proceeding involving a liquor license revocation. The Petitioner's theory, for this position, is that *Plymouth Sedan*, *supra*, addressed itself to a proceeding which was "quasi-criminal" in nature and that Rhode Island liquor license revocation matters are civil in nature. Even acknowledging that liquor license revocation proceedings are as civil in nature is correct, the Court in *Plymouth Sedan*, *supra*, defined its use of the term "quasi-criminal" in such a way as to make its holding applicable to the case at bar. On page 701 of that decision, the Court stated, "...a forfeiture proceeding is 'quasi-criminal' in character. Its object, like a criminal proceeding, is to penalize for the commission of an offense against the law." Accordingly, even if we are to assume that liquor license revocation hearing is civil in nature, we must, nevertheless, search behind the term "civil" to glean the ultimate effect of the proceeding itself. It cannot be contradicted that an adverse ruling from the Liquor Control Administrator will, indeed, result in the forfeiture of a valuable property right,[1] and that this exacting remedy is nothing more than a penalty being imposed because of a violation of the law or of the guidelines prescribed in R.I.G.L., Section 3-5-23.

While the Petitioner acknowledges that even in jurisdictions such as New York and Pennsylvania, where liquor license revocations are considered civil in nature, the exclusionary

[1] See, *Vitterito* v. *Sportsmen's Lodge & Restaurant, Inc.*, 102 R.I. 72, 228 A.2d 119 (1967); *Beacon Restaurant, Inc.* v. *Adamo*, 103 R.I. 698, 241 A.2d 291 (1968); and *R.I. Ophthalmological Society* v. *Cannon*, 113 R.I. 16 at 24 fn. 5, 317 A.2d 124 (1974).

rule applies without equivocation. The Petitioner suggests that the Court de-emphasize the decisions of both those well-respected jurisdictions for the reason that both New York and Pennsylvania have adopted a "blanket application" of the exclusionary rule, which Petitioners allege Rhode Island has not done.

The Petitioners further suggest that the case of *United States* v. *Janis*, 428 U.S. 433 (1976), provides solace to a jurisdiction hesitant about expanding the scope of the exclusionary rule. It is submitted that petitioner's reliance upon *Janis*, *supra*, is misplaced. *Janis*, *supra*, concerned an illegal seizure of bookmaking records by the State. Because of the illegal seizure, the State could not convict Mr. Janis of a crime; however, the United States sought to obtain $4,956.00 in wagering and excise taxes from the proceeds of the bookmaking. Mr. Janis objected on the ground that the evidence on which the United States predicated its claim was illegally seized. This Court distinguished *Plymouth Sedan*, *supra*, when it held that the evidence should be admitted. However, this matter was purely civil in that the Government was only seeking its rightful share of the proceeds according to law, and there was no element of penalty involved. Simply put, the Government was getting its just due.

The Petitioner, in its brief, seems to accord great weight to the decisions of the Rhode Island Supreme Court in the cases of *State* v. *Spratt*, 120 R.I. 192, 386 A.2d 1094 (1978) and *Bridges* v. *Superior Court*, 121 R.I. 101, 366 A.2d 97 (1978), and the approach discussed in those decisions. The Rhode Island Supreme Court concluded that deterrence of the unconstitutional methods of police conduct in situations involving revocations of liquor licenses is on balance, of greater importance than the harm, if any, that would follow from the application of the exclusionary rule to such situations.

In essence, it is clearly logical that the Rhode Island Supreme Court, in using the balancing test in *Spratt* and

Bridges, *supra*, concluded that the risk of harm to society was a more important consideration than the issue of police deterrence. Obviously, the prospect of having a convicted violator escape the consequences of his actions by application of the exclusionary rule would propose a definite threat to society. In the case at bar, the failure to revoke a liquor license does not pose a similarly severe threat to the welfare of society as would the failure to revoke a person's probation or parole.

Conclusion

The decision of the Rhode Island Supreme Court in the instant case does not present an important question of Federal Law unsettled by this Court or one in conflict with applicable decisions of this Court or a case otherwise calling for the supervision of the Supreme Court of the United States. The Petition should be denied.

Respectfully submitted,

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